

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AMGEN, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05 CV 12237 WGY
)	
F. HOFFMANN-LAROCHE LTD.,)	
a Swiss Company, ROCHE DIAGNOSTICS)	
GMBH, a German Company, and)	
HOFFMANN LAROCHE INC., a New)	
Jersey Corporation,)	
)	
)	
Defendants.)	

**PLAINTIFF AMGEN’S MOTION *IN LIMINE* NO. 16:
EXCLUDE SOFOCLEOUS TESTIMONY REGARDING THE COMPETENCE OF THE
EXAMINATION PROCESS IN THE U.S. PATENT & TRADEMARK OFFICE**

Pursuant to FRE 602 and 701, Plaintiff Amgen Inc. ("Amgen") requests that this Court preclude Defendants F. Hoffmann-La Roche Ltd., Roche Diagnostics GmbH, and Hoffmann-La Roche Inc. (collectively "Roche") from referring to or introducing into evidence the expected testimony of Roche’s witness, Michael Sofocleous.

Mr. Sofocleous was formerly Roche’s patent law expert. During the July 17, 2007 pretrial conference, the Court said it would not permit testimony of patent law experts, but would permit such witnesses to testify as fact witnesses on routine-practice pursuant to FRE 406. Roche has disclosed that it intends to call Mr. Sofocleous in this regard.

However, Mr. Sofocleous has no personal knowledge of the prosecution of the patents-in-suit. And, Mr. Sofocelous is unqualified under FRE 602 and 701 to testify about the routine practices of the PTO with respect to the examination of applications during the period of the prosecution of the patents-in-suit because his contemporaneous personal knowledge extends only

to *interference* practice, not examination practice. Therefore, Mr. Sofocleous has no factual basis from which to testify regarding the competency of patent examiners or the examination process. Further, as a matter of law, Roche should not be permitted to introduce testimony regarding the competency of the U.S. Patent and Trademark Office.

Amgen requests that this Court enter an order precluding Mr. Sofocleous from testifying about supposed routine practices of patent examiners during periods in which he was not employed in that division and from speculating in any manner about the competency of the U.S. Patent and Trademark Office, either generally or as relates to the prosecution of the patents-in-suit.

In support of this motion, Amgen submits a brief.

Respectfully Submitted,

Date: August 24, 2007

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CERTIFICATE PURSUANT TO LOCAL RULE 7.1

I certify that counsel for the parties have conferred in an attempt to resolve or narrow the issues presented by this motion and no agreement was reached.

/s/ Michael R. Gottfried
Michael R. Gottfried

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the Electronic Case Filing (ECF) system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants, on the above date.

/s/ Michael R. Gottfried
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